ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.245 OF 1995

Mr. Rajendra P. Bhadekar ...Appellant.

Vs.

Mr. Lalaji Hansraj Patel & Ors. ...Respondents.

Mr. C.M.Lokesh i/by Mr. G.S.Hegde for the appellant.

None for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 3rd October, 2007

JUDGMENT :-

1. The appellant who because of vehicular accident in question sustained injuries, that resulted into permanent 50% disability, has filed the present appeal as by the impugned order dated 3rd September, 1993, Joint District Judge (M.A.C.T.), Ratnagiri has granted the claim of Rs.25,000/- (Rupees twenty five thousand only) with interest at the rate of 9% p.a. only, though claim was made of Rs.3,50,000/- (Rupees three lacs fifty thousand only) by filing application bearing Motor Accident Claim Petition No. 207 of 1990.

2. None appeared for respondent No.2 though duly served. Appeal against respondent No.1 (Owner of the

vehicle) stands dismissed as per Registrar's order dated 13th January, 2005.

3. The learned counsel appearing for the appellant basically submitted that there is no challenge to the injuries sustained because of rash and negligent driving on the part of driver of his Motor Vehicle Tempo. The finding is further remain unchallenged that there was contributory negligence of both the parties.

4. There is no challenge made by the contesting respondent (owner of the vehicle) as well as Insurance Company to the impugned order.

5. The learned counsel appearing for the appellant is also not disputing the finding given so far as the accident and also of the contributory negligence. However, submitted that the grant of compensation to the appellant who is suffered 50% permanent disability is unjust and not reasonable.

6. He has strongly relied on the decision of Bombay High Court in First Appeal No. 814 of 1996 dated 16th September, 2004 whereby in a case where the appellant

therein though held guilty of contributory negligence, in view of the injuries sustained of similar type of permanent disability of leg, after considering the net income of Rs.2900/- p.m. and applying multiplier of 18, awarded compensation to the tune of Rs.9,60,400/- (Rupees nine lacs sixty thousand four hundred only) with interest at the rate of 12% p.a. from the date of application till payment.

7. The appellant was doing the business of tailoring in a village having four workers to work with him. The reasoning given by the trial Court that this accident would not affect his tailoring business or any loss to his business is not correct. One cannot overlook the fact that for a tailoring business legs are one of the important limb to be used in the sewing works and otherwise. Merely because he could sew by one leg that itself cannot be the reason to overlook the fact that the appellant definitely would suffer loss because of one leg. Now-a-days, an electric sewing machines are available and or machines operatable by hand are no ground to discard the claim as raised. The fact that the petitioner-appellant is doing the business in a village just cannot be lost site of. The learned Judge has granted Rs.25,000/-

(Rupees twenty five thousand) to the petitioner-appellant towards compensation, based on some authorities. The facts are totally distinct and distinguishable.

8. The Division Bench as cited above, whereby the Court has considered to grant 18 multiplier by assessing the monthly income of the victim in that case. The monthly income as claimed is of Rs.1,200/- (Rupees one thousand two hundred only). Even if taken note of reducing 1/3 i.e. (Rs.1,200 - Rs.400/- = Rs.800/- p.m.) would be fair and reasonable.

9. The age of the petitioner-appellant at the relevant time was 26 years. Therefore, applying the multiplier of 18, the amount should be Rs.800/- x 12 x 18 = Rs.1,72,800/- (Rupees one lac seventy two thousand eight hundred only). There is no challenge in so far as the grant of expenditure towards accident. However, there is further no challenge that the Insurance Company, respondent No.2 is responsible for the payment as respondent No.1 had insured the vehicle with respondent No.2. The contributory negligence has also remained unchallenged and as the trial Court held both the opponents-respondents

jointly and severally responsible for this payment, I am of the view that the above amount need to be reduced to 50%. Therefore, total amount of compensation, according to me would be Rs.86,400/- (Rupees eighty six thousand four hundred only) is just and reasonable.

10. The interest granted at the rate of 9% p.a. from the date of application is just and fair. Therefore, on the enhanced amount, the interest should be calculated accordingly from the date of application till the realization of the amount on the balance amount by deducting Rs.25,000/-. as already directed to be paid by the trial Court. It comes to (Rs.86,400 - Rs.25,000 = Rs.61,400) (Rupees sixty one thousand four hundred only).

11. In the circumstances, the award in the impugned judgment shall stand enhanced to Rs.86,400/-, however, it is subject to deduction of Rs.25,000/-, as already paid together with interest at the rate of Rs.9% p.a. on the enhanced amount from the date of application.

12. The award be done accordingly.

13. The appeal is accordingly allowed.

(ANOOP V. MOHTA, J.)